

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**GERALD D. HAMBRIGHT,**

**Petitioner,**

**v.**

**CASE NO. 21-3249-SAC**

**STATE OF KANSAS,**

**Respondent.**

**MEMORANDUM AND ORDER**

This matter is before the court on a Notice of Interlocutory Appeal (Doc. 8) in which Petitioner challenges the Court's Notice and Order to Show Cause (Doc. 5); Petitioner asserts that he is unable to pay the \$5.00 filing fee. Also before the Court is Petitioner's Motion to Waive Filing Fee (Doc. 7), in which he asks the Court to waive the filing fee due to his inability to pay.

The Motion to Waive Filing Fee (Doc. 7) is denied as moot. In the Notice and Order to Show Cause, the Court granted Petitioner's motion for leave to proceed in forma pauperis, so no filing fee is required. (See Doc. 5.)

Petitioner's interlocutory appeal must be evaluated pursuant to 28 U.S.C. § 1292(b), which provides in pertinent part:

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals...may thereupon, in its discretion,

permit an appeal to be taken from such order...

To the extent Petitioner's Notice of Interlocutory Appeal may be construed as a motion for certification under § 1292(b), the Court finds neither exceptional circumstances which might justify appellate review at this point nor any ground suggesting that such an appeal might advance the ultimate resolution of this matter.

**IT IS, THEREFORE, BY THE COURT ORDERED** that certification of this interlocutory appeal is denied.

**IT IS FURTHER ORDERED** that no stay will issue in this matter during the pendency of the appeal.

**IT IS FURTHER ORDERED** that Petitioner's Motion to Waive Filing Fee (Doc. 7), is denied as moot.

Copies of this order shall be transmitted to Petitioner and to the Clerk of the U.S. Court of Appeals for the Tenth Circuit.

**IT IS SO ORDERED.**

DATED: This 17th day of December, 2021, at Topeka, Kansas.

SAM A. CROW  
U.S. Senior District Judge